



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/087,705	11/22/2013	Jay Monahan	2043.383US3	4883

49845 7590 03/29/2017
SCHWEGMAN LUNDBERG & WOESSNER/EBAY
P.O. BOX 2938
MINNEAPOLIS, MN 55402

EXAMINER

LE, JESSICA N

ART UNIT	PAPER NUMBER
----------	--------------

2157

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

03/29/2017

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM
SLW@blackhillsip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAY MONAHAN

Appeal 2016-007655
Application 14/087,705¹
Technology Center 2100

Before ERIC S. FRAHM, JOHN D. HAMANN, and
SCOTT E. BAIN, *Administrative Patent Judges*.

HAMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant files this appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 21, 22, 25–29, 32–35, and 38–40. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

THE CLAIMED INVENTION

Appellant's claimed invention relates to data communications, including retrieving search result information and digital content. Spec. ¶ 2.

¹ According to Appellant, the real party in interest is EBAY INC. App. Br. 2.

Claim 21 is illustrative of the subject matter of the appeal and is reproduced below.

21. A method comprising:

receiving, at a server machine, input information from a user, the input information including an artist identification, event type, and purchase limitations, the purchase limitations including authorization for multiple purchases with total purchases not to exceed a predetermined amount;

generating metadata information from the input information to target search results to tastes and preference of the user;

periodically searching, by the server machine, for events corresponding to the artist identification and the event type included in the metadata information to identify ticket information corresponding to both the artist identification and the event type;

providing, by the server machine, the ticket information to the user; and

purchasing tickets, in digital content form, from the ticket information in accordance with the purchase limitations.

REJECTIONS ON APPEAL

(1) The Examiner rejected claims 21, 22, and 25–27 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

(2) The Examiner rejected claims 21, 22, 25–29, 32–35, and 38–40 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Karonis et al. (US 7,584,123 B1; issued Sept. 1, 2009) (hereinafter “Karonis”) and Brodzeller (US 2009/0063207 A1; published Mar. 5, 2009).

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s contentions that the Examiner erred. In reaching our decision, we consider

all evidence presented and all arguments made by Appellant. We below address specific findings and arguments.

(1) *Statutory subject matter*

Appellant argues claim 21 is directed to statutory subject matter, contrary to the Examiner's findings. App. Br. 10–12; Reply Br. 3–4. More specifically, Appellant argues claim 21 comprises a “unique combination of elements [that] are not discussed in the art, demonstrating that they are not fundamental.” App. Br. 11. Appellant also asserts that the “unique collection of claimed features improve the computers used to enable them to support online interaction.” App. Br. 11.

Additionally, Appellant argues the Examiner (i) does not sufficiently identify the abstract idea, (ii) provides no evidence of any basis or authority for the finding, (iii) fails to refute Appellant's assertion “that the ordered elements of claim 21 include significantly more than an abstract idea,” and (iv) fails “to properly consider all claim elements in combination.” See App. Br. 10–11; Reply Br. 4.

The Examiner finds claim 21 is directed to non-statutory subject matter (i.e., an abstract idea). Ans. 8. More specifically, the Examiner finds claim 21 relies on conventional steps for the fundamental economic practice of online purchasing (i.e., an abstract idea), including receiving user input, targeting search results based on user parameters (e.g., preferences, input limitations), and online purchasing. *Id.* The Examiner also finds the claimed steps do not amount to significantly more than the abstract idea of online purchasing, as well as that there is no indication that the combination of elements improves the particular implementation, or improves any other technology set forth in the claims. *Id.*

We are not persuaded by Appellant’s arguments. The Supreme Court has long held that abstract ideas are not patentable. *See Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014). *Alice* provides a two step analysis for determining patent subject matter eligibility: (i) determining whether a claim at issue is directed to an abstract idea, and if so, (ii) considering the elements of the claim “individually and ‘as an ordered combination’” to determine whether they “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 132 S. Ct. at 1298, 1297). In other words, the second step is to decide whether the claim amounts to “significantly more” than the idea itself. *Id.*

Turning to *Alice*’s first step, we agree with the Examiner that claim 21 is directed to an abstract concept (e.g., online purchasing) having conventional steps — Appellant characterizes these steps as “receiving the input information, performing automated searches, and purchasing tickets and delivering event information to the user of the present claims.” As to the second step, we find nothing in claim 21 that adds anything “significantly more” to transform the abstract concept of online purchasing into a patent-eligible application. *Alice*, 134 S. Ct. at 2357.

We are unpersuaded by Appellant’s conclusory attorney argument that the claimed features “improve the computers used to enable them to support online interaction.” We also are unpersuaded by Appellant’s attempt to liken claim 21 to the subject matter at issue in *Diamond v. Diehr*, 450 U.S. 175 (1981). *Diehr* instead involved a transformative manufacturing process involving “constantly determining the temperature of the mold [and] constantly recalculating the appropriate cure time through the use of the [mathematical] formula.” *See Diehr*, 450 U.S. at 187.

Accordingly, we sustain the Examiner's § 101 rejection of claim 21, as well as claims 22 and 25–27, which depend therefrom, and for which Appellant did not provide separate patentability arguments.

(2) Periodically searching

Appellant argues the combination of Karonis and Brodzeller, and Karonis in particular, fails to teach or disclose “periodically searching, by the server machine, for events corresponding to the artist identification and the event type included in the metadata information to identify ticket information corresponding to both the artist identification and the event type,” as recited in claims 21 and 28, and similarly recited in claim 35. Specifically, Appellant argues Karonis instead teaches conducting a one-time search for tickets. *See* App. Br. 13 (citing Karonis Figs. 4–5, col. 41, ll. 62–67).

The Examiner finds the combination, and Karonis in particular, discloses the disputed limitation. *See* Ans. 14; Final Act. 6. Specifically, the Examiner finds Karonis teaches or suggests “a GUI as shown the artist and event information, and search per period time set.” Ans. 14 (citing Karonis Figs. 4–5; col. 11, ll. 25–33); Final Act. 6 (citing same).

We are persuaded by Appellant's arguments. We find the cited portions of Karonis teach, *inter alia*, searching for events corresponding to artist and event type, but fail to teach or suggest that such searching occurs more than one time — there is no teaching or suggestion that such searching occurs periodically. *See* Karonis Figs. 4–5; col. 11, ll. 25–33

Accordingly, we do not sustain the Examiner's § 103 rejection of claims 21, 28, and 35, nor the remaining claims on appeal, each of which depend, at least indirectly, from one of these independent claims.

DECISION

We affirm the Examiner's § 101 rejection of claims 21, 22, and 25–27² for being directed to non-statutory subject matter.

We reverse the Examiner's § 103 rejection of claims 21, 22, 25–29, 32–35, and 38–40.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

² In the event of further prosecution, we invite the Examiner to consider whether our findings are relevant to claims 28 and 35 in light of the *Alice* decision's treatment of method and similar system claims having generic technology. *See Alice*, 134 S. Ct. at 2360.